

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-98

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COMMENTS OF ANCHORAGE TELEPHONE UTILITY

The Municipality of Anchorage d/b/a Anchorage Telephone Utility ("ATU") respectfully submits these Comments on two crucial issues under the Telecommunications Act of 1996 (the "1996 Act") and in the Notice of Proposed Rulemaking in this proceeding. In particular, ATU responds to the Commission's request for comment on whether it should adopt national guidelines for State commissions to apply in determining whether the requirements of Sections 251(b) and (c) should be suspended or modified for local exchange carriers ("LECs") with fewer than two percent of the Nation's access lines. See Section 251(f)(2) of the Communications Act, 47 U.S.C. § 251(f)(2). ATU also responds to the Commission's inquiry whether it should adopt national standards for determining what constitutes a bona fide request to an incumbent LEC under Section 251(b) or (c).

ATU provides local exchange service in Anchorage, Alaska. Serving approximately 145,000 access lines, ATU has only nine one-hundredths of one percent of the nationwide total. Nevertheless, ATU has already received two letters from interexchange carriers ("IXCs") proposing to compete with ATU's local exchange services

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pursuant to Section 251 of the Act. Responding to these letters in an environment of regulatory uncertainty has proved inefficient and disruptive to ATU's daily operations.

ATU therefore submits these comments to urge the Commission

- to adopt guidelines for assisting State commissions in implementing their important responsibilities under Section 251(f)(2) of the Act, and
- to adopt rules for determining when a request for services, interconnection or network elements to an incumbent LEC is sufficiently bona fide to trigger the LEC's statutory interconnection negotiation obligations.

A. National Standards for Implementing Section 251(f)(2).

The 1996 Act was designed to open telecommunications markets to competition and to allow robust competition to replace economic regulation. To accomplish this goal, Sections 251(b) and (c) of the Act impose substantial obligations on incumbent LECs to negotiate interconnection arrangements, to offer resale of their services, to provide number portability and dialing parity, to provide access to rights of way, to permit collocation of equipment necessary for competitors to interconnect, to unbundle access to and develop rates for each network element, and to notify the public of changes that would affect services using that LEC's facilities and networks. These obligations are substantial and for most LECs, including ATU, they are new.

In adopting the 1996 Act, Congress also realized that competition would not serve the public interest if it were automatically introduced everywhere in the country at the same time. Congress specifically determined that careful consideration should be given before introducing competition in areas served by rural, small and medium-sized telephone companies. Congress understood the need "to balance the desire to promote competition in the local exchange area while ensuring that smaller providers have the

necessary flexibility to comply with the [Act's] interconnection requirements."^{1/}

Accordingly, Congress enacted Section 251(f)(2), which requires State commissions, on petition by an incumbent LEC, to suspend or modify the interconnection, unbundling, collocation and other requirements of Sections 251(b) and (c) if necessary to avoid significant adverse impact on users, or to avoid imposing requirements that are unduly economically burdensome or technically infeasible.

The two percent concept embodied in Section 251(f)(2) first emerged in 1993 during consideration of S. 652, which was the telecommunications bill introduced and debated in the 103rd Congress. The need for and desirability of relief for small and medium-sized LECs from substantial new interconnection and other obligations to support competition with their services was thus carefully considered by Congress for three years before its inclusion in the 1996 Act. Accordingly, Section 251(f)(2) is an indispensable component of the 1996 Act.

ATU therefore urges the Commission to adopt national guidelines for State commissions exercising their statutory responsibilities that will properly reflect the balance struck by Congress. In particular, national guidelines should create a rebuttable presumption that the requirements of Sections 251(b) and (c) should be suspended or modified in the following circumstances:^{2/}

^{1/} 142 Cong. Rec. 41163 (daily ed. Feb. 1, 1996) (statement of Rep. Lincoln). Representative Lincoln was a member of the House Subcommittee on Telecommunications and Finance.

^{2/} These guidelines follow those suggested in the Comments filed by USTA in this proceeding.

- where a LEC would not be able to recover the total cost of its obligations under Section 251(b) or (c), including costs incurred to establish unbundled elements, to interconnect as proposed by potential competitors, to provide resale at proposed wholesale rates, to modify facilities and systems to support collocation, to identify costs and develop rates, and to modify support systems;
- where the rates for resale, interconnection, unbundled network elements or other services would not be cost-based, would produce a subsidy to the new market entrant, or otherwise would not be compensatory to the incumbent LEC;
- where compliance with Section 251(b) or (c) responsibilities would create an undue financial risk for the incumbent LEC;
- where the request for resale, number portability, dialing parity, access to rights of way, or reciprocal compensation for transport and termination is not bona fide; or
- where a requested arrangement under Section 251(b) or (c) has not been previously implemented by a LEC with more than 2 percent of access lines nationwide.^{3/}

These guidelines would be just that -- guidelines. State commissions would, as they must under the statute, retain ultimate authority to decide whether to suspend or modify the requirements of Sections 251(b) and (c). Thus, State commissions would have the flexibility necessary to address concerns and circumstances unique to their jurisdictions. Similarly, if the circumstances gave rise to the presumption, the telecommunications provider making a request for services, facilities or information under Section 251(b) or (c) would have an opportunity to rebut it by showing, for example, that suspension or modification would disserve the public interest.

^{3/} Of course, a requested arrangement does not become reasonable for LECs with less than 2 percent of access lines just because a LEC with more than 2 percent has implemented it.

B. Standards for a Bona Fide Request under Section 251(b) and (c).

The Commission should also adopt national standards for determining what constitutes a bona fide request to an incumbent LEC under Section 251(b) or (c). Under Sections 251 and 252 of the 1996 Act, significant obligations attach once an incumbent LEC receives a request for services, interconnection or network elements pursuant to Section 251(b) or (c). Specifically, in response to a request, an incumbent LEC must negotiate in good faith towards an agreement that responds to the request, including "a detailed schedule of itemized charges for interconnection and each network service or element included in the agreement." Section 252(a).

Complying with these obligations generates significant costs. To protect LECs from substantial expenditures in response to frivolous, incomplete or otherwise defective requests, while encouraging prompt and focused resolution of serious requests, the Commission should establish criteria for determining whether a request pursuant to Section 251(b) or (c) is bona fide, and whether an incumbent LEC is therefore obligated to respond. ATU agrees with USTA that a carrier making such a request should be required to identify: (a) the specific services, points of interconnection and network elements being sought, (b) any desired interface specification, (c) how each interconnection point, service or network element will be used, (d) the estimated delivery dates for wholesale services, interconnection facilities or other services or elements, (e) the quantity of facilities, services and elements ordered at the desired price, and (f) any desired changes in LEC operations or procedures.

By adopting these criteria, the Commission will protect incumbent LECs from the tremendous burden and expense of pricing every conceivable service configuration and unbundled network element while the requesting carrier determines the type of interconnection it desires. This concern is all too real. ATU has received two letters purporting to request interconnection. Neither, however, can qualify as a realistic basis for commencing meaningful negotiations. One is a 1-page letter that simply asserts a need for interconnection. The other is an 8-page, single-spaced letter that demands detailed technical, operational and cost information on practically every facet of ATU's local exchange service, without providing any indication of what the requesting carrier actually plans, needs or wants. Indeed, this second letter goes far beyond the requirements of Section 251 and demands detailed information on sharing of computer information systems and on training of personnel.

There are substantial costs to responding to such a request. Beyond the out-of-pocket costs, responding to such inquiries -- especially when there is no assurance that they will mature into an agreement -- entails significant disruptions for ATU management and staff from the immediate and pressing tasks of providing local exchange services to their subscribers. Furthermore, ATU has no assurance that the requesting carrier will actually place an interconnection order and has no mechanism to recover its costs of responding to the carrier's inquiry. Thus, absent meaningful and realistic criteria for determining whether a request is bona fide, incumbent LECs like ATU will be obligated to embark on time-consuming and costly negotiations at the whim of any telecommunications carrier. Accordingly, to ensure that LECs incur these costs for only

legitimate and serious requests, the Commission should require requesting carriers, if they do not order the items set forth in the request for services or network elements, to reimburse the incumbent LEC's costs (including costs studies and staffing increases) of responding to the request.

* * *

In adopting the 1996 Act, Congress charged State commissions with determining whether competition in areas served by small and medium-sized telephone companies should be delayed or modified. The goal of Section 251(f)(2) is to protect telephone subscribers in these areas from significant harm that might be caused if competition were immediately introduced. Congress viewed this provision as critical for preserving universal service in areas served by small and mid-sized LECs. Accordingly, the terms of this provision are mandatory: States must suspend or modify the requirements of Section 251(b) and (c) if necessary and consistent with the public interest, convenience and necessity. To assist States and incumbent LECs in discharging their important responsibilities under this Act, the Commission should adopt national guidelines for helping to determine when the requirements of Sections 251(b) and (c) should be suspended or modified, and should adopt rules for determining when an

incumbent LEC has received a bona fide request for interconnection, services or network elements under those sections.

Respectfully submitted,

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